

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

PEDRO ANTONIO AQUINO

Claimant

VS.

SCHOOL SERVICES & LEASING, INC.

Respondent

Self-Insured

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Docket No. 247,006

ORDER

Claimant appeals from the November 30, 1999, preliminary hearing Order of Administrative Law Judge John D. Clark. The Administrative Law Judge denied claimant temporary total disability compensation and denied claimant's request for additional medical treatment, but granted unauthorized medical payments for the medical services provided by Steven A. DuCharme, D.C., up to the statutory limit.

ISSUES

- (1) Did claimant meet with personal injury by accident which arose out of and in the course of the employee's employment, resulting in the need for medical treatment and temporary total disability?
- (2) Does the Appeals Board have jurisdiction to hear this appeal?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Claimant was employed as a bus driver for respondent. He had worked in that capacity since August of 1997.

On May 4, 1999, while driving his school bus on I-135 in Wichita, Kansas, claimant struck another vehicle from behind, causing substantial damage to the bus and to the other vehicle. Claimant was wearing his seatbelt at the time.

At the scene of the accident, claimant was asked if he suffered any injuries, and he stated that his body hurt. When asked by law enforcement officers at the scene of the accident whether he suffered any injury, claimant denied injury.

Claimant was taken to the hospital after the accident for the purpose of being tested for drugs and alcohol. Claimant did not request any medical treatment at that time.

Claimant was also asked by respondent's employees if he suffered any injury. Claimant's responses in that regard were contradictory. During claimant's discovery deposition, which is part of the record, claimant admitted he spoke to a dispatcher and another woman employed with respondent, but told neither of them that he was injured and did not request medical treatment. However, during the preliminary hearing, claimant testified that he told his supervisor that his back hurt as a result of the automobile accident.

Claimant was suspended immediately after the accident, pending an investigation by the review board for School Services & Leasing and by the local authorities. Claimant was later charged with driving too close and traveling at excessive speed and, on May 17, 1999, was terminated from his employment with respondent for having caused the accident.

David Schultz, respondent's regional manager, did an investigation of the accident and helped determine that claimant caused the vehicle accident, which led to claimant's termination. During the investigation, Mr. Schultz inquired if claimant was okay, and claimant responded he was a little sore but otherwise he was okay. Claimant did not request medical treatment at that time.

Shortly after being terminated by respondent, claimant went to work at Old Chicago Restaurant as a cook, working 30 hours a week. This required that claimant stand continuously. Claimant also worked part-time as shift manager at the Villa Pizza Restaurant in the Towne East Mall. This also required that the claimant be on his feet regularly.

While working these two jobs, claimant's back became worse to the point where, on July 19, 1999, claimant sought medical treatment through the Kingman Chiropractic Center with Steven A. DuCharme, D.C. Dr. DuCharme's medical notes indicated that claimant's back pain was "due to auto accident." Dr. DuCharme then recommended that claimant be off work from July 20, 1999, through August 16, 1999.

Claimant finally sought chiropractic care in July because his back continued to grow worse. He was treated by Dr. DuCharme seven times, and was diagnosed with lumbar sprain or strain, cervical sprain or strain, displacement of lumbar disc without myelopathy, and sciatic neuritis.

Respondent was first advised that claimant was alleging a workers' compensation claim on August 15, 1999, when claimant called respondent and asked who was going to pay his medical bills.

In proceedings under the Workers Compensation Act, it is claimant's burden to prove his entitlement to benefits by a preponderance of the credible evidence. See K.S.A. 1999 Supp. 44-501 and K.S.A. 1999 Supp. 44-508(g).

It is undisputed that claimant sustained an accident while employed with respondent. Respondent does not deny that claimant's motor vehicle accident was related to his employment, but simply denies that claimant suffered any injuries at that time. The record is somewhat contradictory in that claimant, at times, stated he suffered no injury and, at other times, stated that he was sore after the accident. The parties acknowledge that this accident caused damage of nearly \$30,000 to the various vehicles. One would assume that it would require substantial force to cause that type of damage to the claimant's school bus and to the semitrailer truck which claimant struck. Even though claimant was wearing his seat belt, it would be difficult to imagine that much force without some injury being involved.

The Appeals Board concludes that claimant did suffer accidental injury arising out of and in the course of his employment during the accident.

The Administrative Law Judge, in the Award, gave no indication whether he found this claim to be compensable or not. He denied temporary total disability compensation and additional medical treatment, but granted unauthorized medical treatment up to the statutory limit. It would require a finding of compensability in a workers' compensation case before unauthorized medical under K.S.A. 1999 Supp. 44-510 could be awarded. Therefore, the Appeals Board must assume that the Administrative Law Judge, in granting the unauthorized medical, found this claim to be compensable.

K.S.A. 1999 Supp. 44-534a discusses certain jurisdictional issues which are appealable from preliminary hearings, including whether the employee suffered an accidental injury, whether the injury arose out of and in the course of the employee's employment, whether notice was given or claim timely made, and whether certain defenses apply. These issues are subject to review on appeal from preliminary hearing.

K.S.A. 1999 Supp. 44-551 limits review by the Workers Compensation Appeals Board of preliminary hearing orders to situations where it is alleged that the administrative law judge exceeded his or her jurisdiction in granting or denying the relief requested at preliminary hearing.

K.S.A. 1999 Supp. 44-534a, however, also grants the administrative law judge the authority to determine a claimant's entitlement to temporary total disability compensation and ongoing medical care. Those issues are not appealable from a preliminary hearing order.

It has been determined that the Administrative Law Judge found this matter to be compensable, and the Appeals Board agrees with that finding for purposes of this preliminary hearing. The issues dealing with claimant's entitlement to medical treatment and temporary total disability compensation are nonjurisdictional, and claimant's appeal on those issues should be dismissed.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the appeal by the claimant, with regard to the issues of temporary total disability compensation and additional medical treatment, is dismissed, but the Order of Administrative Law Judge John D. Clark dated November 30, 1999, is, otherwise, affirmed.

IT IS SO ORDERED.

Dated this ____ day of February 2000.

BOARD MEMBER

c: Brian D. Pistotnik, Wichita, KS
Douglas C. Hobbs, Wichita, KS
John D. Clark, Administrative Law Judge
Philip S. Harness, Director